Supreme Court, U.S.
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NO. 94-655

in the Supreme Court of the United States

October Term, 1994

THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, and EAST COAST INTERMODAL SYSTEMS, INC., a/k/a E.C.I.S., INC.,

Petitioners,

vs.

EMPIRE FIRE & MARINE INSURANCE COMPANY, and LUIS CARBONELL,

Respondents.

On Petition for a Writ of Certiorari to the Florida District Court of Appeal, Third District

REPLY TO BRIEF IN OPPOSITION

WILLIAM G. BURD, Esq.
Counsel of Record
MADELYN SIMON LOZANO, Esq.
KENNEY BURD & MARKOWITZ
601 Brickell Key Drive, Suite 500
Miami, Florida 33131
Telephone: 305/374-3100
Counsel for Petitioners

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a. Certiorari Jurisdiction Lies in this Court.

In its Brief in Opposition, Respondent erroneously alleges that this Court lacks jurisdiction because the issues presented in the Petition for Writ of Certiorari were purportedly not decided by the Florida Court of Last Resort. Respondent erroneously claims that Petitioners cannot invoke this Court's certiorari jurisdiction because Petitioners did not request that the Florida Third District Court of Appeal certify to the Florida Supreme Court the issue raised in this Petition. Respondent is wrong for two reasons.

First, Petitioners have properly invoked U.S. Supreme Court jurisdiction on the ground that conflict exists among the state and federal courts on an issue of interpretation of ICC regulations which was decided by the Florida Third District Court of Appeal, the state court of last resort. The issue to be resolved by this Honorable Court is thus one over which solely this Court has jurisdiction. There is no provision in the Florida law for any type of Florida Supreme Court jurisdiction over such inter-jurisdictional conflict.

Second, assuming *arguendo* that the issue of interstate conflict regarding the statutory intent underlying ICC regulations could properly be certified to and decided by the Florida Supreme Court, under Florida law, a party does not have a right to certification of an issue to the Florida Supreme Court. A party may request that the District Court of Appeal certify an issue; however, the Appellate Court is not required to do so. No right of review lies from a failure or refusal of a District Court of Appeal to certify any decision rendered by it. Thus, a party's request for certification has no legal effect in determining whether the United States Supreme Court has jurisdiction over any Florida District Court of Appeal decision which is not

appealable as a matter of right pursuant to the Florida Constitution and the Florida Rules of Civil Procedure. *Nash v. Florida Industrial Comm'n*, 389 U.S. 235, 237, n.1 (1967); *Lipsius v. Bristol-Myers Co.*, 209 So.2d 680, 681 (Fla. 1972), *citing Whitaker v. Jacksonville Expressway Authority*, 131 So.2d 22 (Fla. 1st DCA 1961). *See Local 174, Teamsters et al of Amer. v. Lucas Flour Co.*, 369 U.S. 95, 98 (1962) (failure to petition for rehearing *en banc* before state supreme court did not restrict United States Supreme Court's jurisdiction).

Based on the foregoing, it is respectfully submitted that certiorari jurisdiction lies in this Honorable Court.

Respectfully submitted,

William G. Burd, Esq.
Counsel of Record

Madelyn Simon Lozano, Esq.

KENNEY BURD & MARKOWITZ
601 Brickell Key Drive, Suite 500
Miami, Florida 33131
Telephone: 305/374-3100

Counsel for Petitioners